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16 Brook Byers, William C. Ericson, Michael
17 Hunkapiller, Randall S. Livingston, Susan
18 Siegel, David Singer and Nominal Defendant
19 Pacific Biosciences of California, Inc.

20
21 IN THE UNITED STATES DISTRICT COURT
22
23 NORTHERN DISTRICT OF CALIFORNIA
24
25 OAKLAND DIVISION

26 ROBERT BURLINGAME, Derivatively on
27 Behalf of PACIFIC BIOSCIENCES OF
28 CALIFORNIA, INC.,

Plaintiff,

v.

HUGH C. MARTIN, BROOK BYERS,
WILLIAM W. ERICSON, MICHAEL
HUNKAPILLER, RANDALL S. LIVINGSTON,
SUSAN SIEGEL, and DAVID SINGER,

Defendants,

and

PACIFIC BIOSCIENCES OF CALIFORNIA,
INC.,

Nominal Defendant.

CASE NO.: 4:11-CV-6703 (CW)

**STIPULATION AND ~~PROPOSED~~
ORDER FOR VOLUNTARY
DISMISSAL WITHOUT PREJUDICE
OF PLAINTIFF'S VERIFIED
SHAREHOLDER DERIVATIVE
COMPLAINT**

1 Defendants Hugh C. Martin, Brook Byers, William C. Ericson, Michael Hunkapiller,
2 Randal S. Livingston, Susan Siegel, and David Singer, along with Nominal Defendant Pacific
3 Biosciences of California, Inc. (“PacBio”) (collectively, the “Defendants”), and Plaintiff Robert
4 Burlingame (“Plaintiff”) (together, the “Parties”) hereby stipulate and agree as follows:

5 WHEREAS, purportedly acting on behalf of Nominal Defendant PacBio, Plaintiff filed his
6 Verified Shareholder Derivative Complaint (Dkt. No. 1) on December 29, 2011, (the “Action”)
7 against certain current and former PacBio officers and directors, asserting, among other things,
8 breach of fiduciary duty, waste of corporate assets, and unjust enrichment;

9 WHEREAS, on March 9, 2012, the Court approved the Parties’ stipulation that Defendants
10 shall not be required to respond to Plaintiff’s allegations unless and until Plaintiff files an amended
11 complaint following the resolution of all motions to dismiss in a related putative securities class
12 action, captioned *Primo v. Pacific Biosciences of California, Inc., et al.*, Case No. 4:11-CV-6599
13 (N.D. Cal.), which has not yet occurred;

14 WHEREAS, Plaintiff and Plaintiff’s counsel have considered the relevant case law and
15 the potential hurdles to successfully proceeding with this Action derivatively, and believe that
16 given the unique facts and circumstances particular to this Action, the litigation risks of
17 proceeding with this Action outweigh the potential benefit to Nominal Defendant PacBio and its
18 shareholders. Accordingly, the Parties have conferred and agreed that, in the interests of PacBio
19 and its shareholders, as well as efficiency and conservation of judicial resources, Plaintiff shall
20 voluntarily dismiss this Action without prejudice;

21 WHEREAS, none of the Defendants in this action has entered into a settlement with
22 Plaintiff in connection with this voluntary dismissal and neither Plaintiff nor his counsel have
23 received or will receive any form of consideration from any of the Defendants in exchange for
24 dismissing this Action;

25 NOW, THEREFORE, the Parties, by and through their undersigned counsel, hereby
26 stipulate and agree, pursuant to Federal Rules of Civil Procedure 23.1(c) and 41(a), subject to the
27 Court’s approval, as follows:

- 28 1. This Action shall be dismissed without prejudice;

2. Each party shall bear its own costs, expenses, and attorneys' fees.

Because the Action is in its preliminary stages, it is respectfully submitted that no notice is required under Federal Rule of Civil Procedure 23.1 and that Nominal Defendant PacBio and its shareholders will not be prejudiced by this dismissal.

Dated: April 11, 2013

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Dated: April 11, 2013

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Attorneys for Plaintiff Robert Burlingame

~~PROPOSED~~ ORDER

Pursuant to the foregoing stipulation of counsel for the respective parties hereto, and good cause appearing, IT IS SO ORDERED.

Dated: April 12, 2013

By: 
The Honorable Claudia Wilken
United States District Judge